IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.784 of 2006

Nirmala ... Petitioner

Vs.

1.The District Collector and
District Magistrate,
Kancheepuram District.

2.The Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George,
Chennai-600 009. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the first respondent in connection with BDFGISSV No.43/2006 dated 06.08.2006, quash the same and to produce the detenu Senthil S/o Dhanapal before this Court and set him at liberty, who is now detained in Central Prison, Vellore under Act 14/1982.

For Petitioner : Mr.R.Rajarathinam

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Senthil, who is detained as a "Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities

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of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 06.08.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, after taking us through the averments in para 5(i) of the grounds of detention has submitted that the ultimate detention order has to be interfered with on the ground of non application of mind on the part of the detaining authority. While elaborating the above submission, the learned counsel appearing for the petitioner has brought to our notice that though the detaining authority has noted that the detenu viz., Senthil has moved a bail application before the Principal District and Sessions Court, Chengalpattu in Crime No.395/2006, 108/2006 on 27.07.2006 in Crl.M.P.No.8872/2006 and on 29.07.2006 in Crl.M.P.No.8987/2006 and those petitions are posted for hearing on 07.08.2006, he has arrived at a conclusion mechanically that "... I am also aware that it is very likely that he may come out on bail by filing a bail application before the same or higher Court ...". As rightly pointed out by the learned counsel for the petitioner, the detaining authority, having found that the bail applications filed by the detenu are pending before the Principal District And Sessions Court, Chengalpattu, has arrived at a conclusion that it would be possible for the detenu to come out on bail by filing bail application before the same or higher Court, which amply shows his non application of mind in arriving imminent possibility of the detenu being coming out on bail. It is not in dispute that when the bail applications filed earlier are still pending, unless the said petition or petitions dismissed, the detenu cannot move another bail application. We are satisfied that the conclusion arrived at by the detaining authority cannot be sustained and the detention order is liable to be quashed on the ground of non application of mind and accordingly, the same is quashed.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Collector and District Magistrate,
Kancheepuram District.

3. The Superintendent, Central Prison, Vellore.

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

HCP. No.784 of 2006

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